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CASES AND MATERIALS: ADVANCED CONSTITUTIONAL LAW

THE STRUCTURE OF CHARTER RIGHTS

VOLUME I

PROFESSOR LORRAINE E. WEINRIB

SPRING TERM 1992

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## Structure of Charter Rights

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### I. The Project of Rights Protection

- A. R. Brewer-Carias, Judicial Review in Comparative Law (1989), pp. 7-8, 43-53, 71-79 . . . . . 1
- S. Freeman, "Constitutional Democracy and the Legitimacy of Judicial Review" (1991) 9 Law & Philosophy 327-368 . . . . . 13
- A. Lester, "The Overseas Trade in the American Bill of Rights" in V. Blasi, ed. Law and Liberalism in the 1980's (New York: Columbia University Press, 1991) 205-208 . . . . . 36

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- McCleskey v. Kemp, 107 S. Ct. 1756 (1987) . . . . . 38
- Bowers & Hardwick, 106 S. Ct. 2841 (1986) . . . . . 71

##### ii) commentary on rights

- P.B. Kurland, "The Constitution: The Framers' Intent, the Present and the Future" (1987) 32 Saint Louis University L.J. 17-25 . . . . . 85
- E. Meese III, "Toward A Jurisprudence of Original Intent" 11 Harvard J. of Law & Public Policy 5-12 . . . . . 90
- P. Brest, "The Misconceived Quest for the Original Understanding" 204 at 225-7 . . . . . 94
- P. Brest, "The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship" (1981) 90 Yale L.J. 1063-1096 . . . . . 96
- R. Dworkin, "Bork's Jurisprudence" (1990) 57 University of Chicago L.R. 657-677 . . . . . 114
- B. Ackerman, "Robert Bork's Grand Inquisition" (1990) 99 Yale L. J. 1419-27 . . . . . 125

R. A. Posner, "Democracy and Distrust Revisited"  
(1991) 77 Virg. L. R. 641-51 . . . . . 136

iii) commentary on limitation: non-absoluteness,  
balancing, reasonableness

R. A. Posner, "Economics, Politics and the  
Reading of Statutes and the Constitution",  
(1982) 49 U. of Chicago L. R. 263 at 282-88 . 142

B. Neuborne, "Freedom of Expression in the  
United States -- A Case Study in Implied  
Limitations on Textually Absolute  
Constitutional Rights", from de Mestral  
et al, The Limitation of Human Rights in  
Comparative Constitutional Law . . . . . 146

L. Henkin, "Infallibility Under Law:  
Constitutional Balancing" (1978) 78 Columbia  
Law Rev. 1022, extract . . . . . 152

T. A. Aleinikoff, "Constitutional Law in the  
Age of Balancing" (1987) 96 Yale Law J. 943 . 154

A. Meiklejohn, "The Balancing of Self-Preservation  
Against Political Freedom" (1961) 49 Calif.  
Law Rev. 4 . . . . . 165

Note, "Legislative Purpose, Rationality, and  
Equal Protection" (1972) 82 Harv. L. Rev. 123 171

H. A. Linde, "Due Process of Lawmaking" (1975)  
Neb. L. Rev. 1975 . . . . . 186

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i) cases

Dudgeon v. U.K., 22 October, 1981 (Series A:  
v. 45) Judgment of the European Court,  
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Human Rights Law (1990) 189-202 . . . . . 198

Olsson Case, 29 April, 1988 (Series A:  
v. 130), Judgment of the European Court . . . 205



ii) commentary on rights

- J. J. Shestack, "The Jurisprudence of Human Rights", in T. Meron (ed.), Human Rights in International Law (1985), 69-105 . . . . . 211

iii) commentary on limits: "prescribed by law"

- Ross, "Limitations on Human Rights in International Law and the Canadian Charter" (1984) 6 Human Rights Quarterly . . . 236
- Advisory Opinion of May 9, 1986, No. OC-6-86, Inter-American Court of Human Rights . . . . 244
- M. W. Janis & R. S. Kay, European Human Rights Law (1990), pp. 297-300 . . . . . 250

iv) commentary on limits: express grounds of limitation

- A. C. Kiss, "Permissible Limitations on Rights", in L. Henkin, (ed.) The International Bill of Rights: The Covenant on Civil & Political Rights (1981) . . . . . 252
- The Siracusa Principles On the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, (1985) 7 Human Rights Quarterly 1 (extract on limitation) . . . . . 266

v) commentary on derogation

- T. Stein, "Derogation from Guarantees Laid Down in Human Rights Instruments, from I. Maier (ed.), Protection of Human Rights in Europe . . . 270
- J. Hartman, "Derogation from Human Rights Treaties in Public Emergencies (1981) 22 Harv. International Law Journal . . . . . 278
- The Siracusa principles, supra, (extract on derogation) . . . . . 299

